SIONG ENG CO. v. MALAYAN INSURANCE CO., INC.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) & Wylie C.J. (Borneo)) October 14, 1963]

[Singapore — Federal Court Civil Appeal No. 14 of 1963]

Practice and Procedure—Application under O. XIV—Affidavits in support of application by minor officials—Whether affidavits within the rule.

The plaintiff an insurance company filed an application under Order XIV of the Rules of the Supreme Court and in support of this application affidavits were filed by a branch manager and by another functionary of the plaintiff company. It was contended for the defendant that these affidavits were not by their nature sufficient for the purposes of Order XIV.

Held: as the persons who filed the affidavits were in the employ of the plaintiff company and as they stated that the facts were within their knowledge, the affidavits were sufficient for the purposes of the order.

Case referred to:—

(1) *Pathe Freres Cinema Limited* v. *United Electric Theatres Limited* [1914] 3 K.B. 1253, 1255.

FEDERAL COURT.

A. P. Godwin for the appellant.

M. W. Maxwell for the respondent.

Thomson L.P. (delivering oral judgment): This is an appeal from a judgment of the Chief Justice of Singapore, Mr. Justice Wee Chong Jin.

The plaintiff is an Insurance Company carrying on business in the Philippines and the defendant apparently carries on business as some sort of insurance agent in Singapore and at the material time was acting as agent for the plaintiff company.

Disputes of an accounting nature seem to have arisen, with the nature of which I do not think we are concerned, and on the 15th of March the plaintiff company issued a specially indorsed writ against the defendant claiming a total amount of $59,528.67.

The parties then engaged in what I might call a brisk war of affidavits, the fortunes of which I do not propose to follow in detail, and in the event the learned Chief Justice entered judgment for the plaintiff as prayed, that is, for the sum of $59,528.67 and costs.

Against that judgment the unsuccessful defendant has now appealed.

As I have said I do not think it is necessary in order to dispose of the appeal to go through the affidavits in detail. I would, however, at this point dispose of one matter which has been raised by the appellant. It has been said that the affidavits filed by the plaintiff, whatever may be said regarding their contents, were not by their nature sufficient for the purposes of Order XIV. Two of these affidavits, in particular, were criticised, the first one by the Branch Manager of the plaintiff's Singapore office, and the third one by another functionary of the plaintiff firm.

In my view these were perfectly proper persons to swear the affidavits and I base that view on what was said by Lord Buckley in the case of *Pathe Freres Cinema Limited* v. *United Electric Theatres Limited.*[1] His Lordship said:

> "In the present case the plaintiffs are a company. They cannot swear; somebody must therefore do it for them. The affidavit is made by a clerk in their employ. He describes himself as a clerk of the plaintiffs and in their employ and says that the facts are within his own knowledge; that, in my opinion, brings this affidavit reasonably within the rule."

In the present case I think the affidavits are, in the opinion of their Lordships, within the rule.

I pass now to the merits *tanta et talia.* In effect the plaintiff's case is based on a letter written to them by the defendant on 15th January, 1962. I am not overlooking the fact that the defendant says he wrote that letter because he wanted to continue his presumably profitable association with the plaintiff company. Nevertheless there is nothing to suggest that he did not sign it voluntarily or was not very conscious of what he was doing.

That letter is as follows:—

> "We, the undersigned Agents hereby acknowledge and confirm that we have an outstanding account of $69,128.67 with your goodselves, the particulars of which are appended hereunder."

Then followed the particulars.

> "In order to liquidate the abovementioned account, we agree and undertake to pay and settle in full the abovementioned account in the following manner:—
>
> Effective 1st January, 1962, Minimum of M$1,200 per month but not later than 10th of each month, until fully liquidated.
>
> It is clearly understood that should we make default in any of the payments aforesaid, the whole of the balance becomes due and immediately payable. E. & O. E."

Then follows a form of guarantee which is signed with an illegible signature.

In my view that letter is an admission by the defendant that on 1st January, 1962, he owed the plaintiff company $69,128.67 but the global figure of $69,128.67 was subject to adjustment by making allowance for items that have been overlooked or items of an accounting nature. The difference between that sum of $69,128.67 and the amount claimed in the writ is accounted for by the fact that for six months after the date of the letter the defendant paid regular monthly instalments of $1,200. He then missed a month and then he paid the sum of $2,400 leaving a net balance due of $59,000 over.

I can find nothing, except as to one small amount, in the affidavit sworn by the defendant which casts any doubt upon the correctness of the figures stated in the letter of 15th January. A number of questions were raised and, again with one exception in the counter affidavit of the

plaintiff, there were effectively disposed of as errors in arithmetic, matters which the Court is entitled to take into account. The one exception is the defendant's claim that he is not credited with a payment for a dollar stamp. Now that objection the plaintiff company, although they attempted to do so, lamentably failed to dispose of in its entirety. They disposed of it in part by pointing out as a matter of law the stamp in question would cost 50 cents and not $1 but entirely failed to dispose of the defendant's allegation that the expenditure had been incurred. Their only answer was that they were unable to trace the item and, of course, for the purposes of an Order XIV case that is insufficient.

These things drive me to the conclusion that judgment was wrongly entered for the plaintiff company for the sum of $59,528.67 because that was in excess of the amount covered by the defendant's admission. In my view the amount should have been $59,528.17. That however brings to mind the maxim *De minimis non curat lex.* For myself, therefore, I would, subject to an amendment of 50 cents in the amount in the judgment, dismiss the appeal with costs.

Barakbah C.J. (Malaya) and **Wylie C.J. (Borneo)** concurred.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; P. T. Wong & Co.*

TAY SEOW HUAH v. LEE CHAN CHIN & ANOR.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) & Wee Chong Jin C.J. (Singapore)) October 14, 1963]

[Singapore — Federal Court Civil Appeal No. 39 of 1963]

Damages—Fatal accident—Dependency—Value of—Civil Law Ordinance (Cap. 24), ss. 7 and 12.

A woman bread seller lost her life in a running-down case. She left behind her husband and five children, the eldest a girl aged 19 and the youngest a boy aged 8. Sometime after her death but prior to the trial the husband died. Since her death the selling of bread had been carried on by members of her family. In the Court below judgment was entered under section 7 for $2,500 and under section 12 for $13,000, the trial Judge holding that the value of the dependency was $150 to $200 per month. On appeal against quantum of damages,

Held: (1) due to her death the members of her family were required to devote time which might be gainfully employed in other ways in doing what their deceased mother did and to that extent they had suffered loss;

(2) calculations based on the ages of the children and of the period during which they would be entitled to look to their mother for support (accepting $200 as the contribution she was making to their support) add up to $14,500 which was not very different from the learned trial Judge's figure of $13,000 and therefore the appeal should be dismissed.

FEDERAL COURT.

J. D. Donnelly for the appellant.

N. A. Christopher for the respondent.

Thomson L.P. (delivering oral judgment): This is an appeal from a judgment of Mr. Justice Buttrose in a running-down case of the usual type where an unfortunate woman lost her life.

She left behind her five children, a girl aged 19, a boy aged 15, a boy aged 13, a boy aged 10 and a boy aged 8. Sometime after her death but prior to the trial of the action the father died.

In the event judgment was entered under section 7 and section 12 of the Civil Law Ordinance. $2,500 was awarded under section 7 for loss of expectation of life which would go to the estate and $13,000 was awarded under section 12 to the children for loss of support.

The judgment is now appealed against but the appeal is confined to the quantum of damages.

In the first place it is said that in assessing the damages the trial Judge failed to make allowance as regards the question of dependency for the sum of $2,500 awarded for loss of expectation of life. To my mind that argument is without substance. In the first place there is nothing to show that the trial Judge disregarded the point, although it is true he does not mention it. And in the second place, if he did disregard it and if we were to regard it now, we should also have to take into account the fact that immediately prior to her death the deceased woman owed $1,600. That, of course, was a first charge against the damages for loss of expectation of life and would have the effect of reducing the gain to each of the individual dependants by way of accelerated succession to something very trifling.

As regards the award of $13,000 for loss of support, the evidence is that prior to her death this woman was selling bread. I am not saying she was carrying on business. I do not say she was employing herself in business. I just say she was selling bread and she made a profit of some $400 a month. The selling of bread has been carried on since her death not by her but by members of her family. In other words, they are required to devote time which might be gainfully employed in other ways in doing what their deceased mother did and to that extent they have suffered loss.

The question of the quantification of that loss at first sight presents some difficulty. The trial Judge does not give any indication of how he arrived at the figure of $13,000. He did, however, come to the conclusion, which seems a reasonable one on the evidence, that the value of the dependency was between $150 and $200 a month. I have done some calculations myself based on the ages of the children and on my view